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**FACSIMILE TRANSMISSION FROM****TO: EXAMINER ROWAN****FAX NO: 703-305-3597****FROM: DANIEL P. DEVERS****#: D53****DATE: DECEMBER 17, 2001****TIME: 5:50 CST****SHB Client Matter No.:****TKMA.65581****Pages transmitted including cover sheet:****5****FAX RECEIVED****ORIGINAL DOCUMENT WILL NOT FOLLOW.****DEC 17 2001****If you experience any problems, please call extension 30087.****GROUP 3600****OPERATOR:****UNOFFICIAL COMMUNICATION**

**Re: Serial No. 09/451,341; Filed November 30, 1999**  
**Title: LIVEWELL TANK**

Dear Examiner Rowan,

Thanks in advance for agreeing to interview the above-referenced case. I am hopeful that we can reach an agreement. I have enclosed a proposed amendment and some comments so that the interview will be conducted efficiently.

With respect to claims 1 and 22, the first important aspect of applicants' invention is a livewell tank having (1) a top having an upper surface that covers a substantial portion of the perimeter of the compartment, and (2) an overflow drain located proximate the upper surface. As set forth on page 3 of the specification, the location of the drain near the top allows the tank to remain substantially full of water so that sloshing and buffeting are minimized.

It is our position that none of the references teach or suggest a tank having an upper surface covering a portion of the compartment and an overflow drain located near the upper surface so that the tank is capable of being substantially full of water at all desired times. In the last Office action, you noted that the tube 40 in the Hobson patent is used to circulate water, but "is also used as a drain since water flows out of the tube as shown by the arrows in Figs 1-2...[and] removes water which would cause an overflow." We disagree on this point. As set forth in column 3, lines 20-38 of the Spickan patent, the operation of the tube 40 is discussed. Most importantly, at lines 34-35, it notes that excess water in the tank will be discharged

Hobson

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TO: Examiner Rowan  
FROM: Daniel P. Devers  
December 17, 2001  
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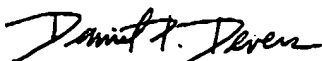
through the ports 25 formed in the upper portion of the rear tank wall 14. While these ports 25 prevent overflow, they do not allow the tank to retain a full volume of water so that sloshing and turbulence are prevented. In other words, these ports do not work in combination with an upper surface over the perimeter of the compartment to allow the compartment to remain nearly completely full of water during all types of boat operation.

Dependent claims 4 and 24 require that the overflow drain be disposed on the front portion of the compartment. In rejecting the claims, your position is that the location of the drain is merely a matter of design choice and does not solve a stated problem. As set forth on page 8, lines 8-12 of the present application, the placement of the overflow drain at the front of the livewell tank prevents water from being forced out of the overflow drain when the boat is accelerated or is otherwise out of plane. The combination of the upper surface and location of the drain on the front of the compartment near the upper surface allows the tank to remain full regardless of the movement of the boat. Applicants believe that this solves a stated problem in a way not contemplated by the prior art, and that the subject matter of the claims is patentable.

Claim 12 is directed to the second aspect of applicants' invention. After the proposed amendment, independent claim 12 recites additional limitations that reflect our client's invention and differentiates the invention further from the Splickan and Hobson patents. As shown in Fig. 1, the upper surface of the top of the tank extends over the perimeter of the compartment. A baffle extends from the sidewall of the tank at a distance from the top. The upper surface and baffle limit the flow of water in the portion of the tank near the top (as well as the lower portion of the compartment) and prevent sloshing in a manner that is different from the prior art. Namely, the Splickan patent teaches a duct 39 that extends from the top. In rejecting claim 12, you note that the duct 39 acts as a baffle. While the duct of the Splickan patent certainly inhibits flow, the top/baffle combination claimed in independent claim 12 is structurally and patentably distinct from a single duct (or baffle) that extends from the top. Namely, the duct 39 presumably works alone to inhibit flow. Conversely, the top and baffle of the invention of claim 12 work in combination with one another to prevent sloshing in a manner that has not been contemplated in the past. Accordingly, we believe that amended claim 12 is also allowable over the art of record.

Thanks again for your attention to this matter. I look forward to discussing these issues with you tomorrow.

Sincerely,



Daniel P. Devers  
Reg. No. 47,523

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**UNOFFICIAL COMMUNICATION****PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Ken Burroughs, et al.	)	Attorney Docket No. TKMA.65581
	)	Art Unit: 3643
	)	Examiner: Rowan, K.
Serial No. 09/451,341	)	
	)	
Filed: November 30, 1999	)	
	)	
Title: LIVEWELL TANK	)	

**PROPOSED AMENDMENT**

1. (Twice Amended) A livewell tank for use on a boat to hold fish, said tank comprising:

a bottom;

a sidewall section having first and second opposing ends, said sidewall section coupled with said bottom at said first end to define an interior compartment;

a top coupled with said second end of said sidewall section, said top forming an opening sized for receiving a fish, said top having an upper surface projecting inwardly from said sidewall section to cover a substantial portion of the perimeter of said interior compartment; and

an overflow drain coupled with said sidewall section of said tank proximate said upper surface [top] whereby said compartment is capable of retaining water near said top of said compartment regardless of the movement of the boat so that sloshing within said compartment is minimized.

12. (Twice Amended) A livewell tank for use on a boat to hold fish, said tank comprising:

a bottom;

a sidewall section having first and second opposing ends, said sidewall section coupled with and upstanding from said bottom at said first end to define an interior compartment;

a top coupled with said second end of said sidewall section, said top forming an opening sized for receiving a fish, said top having an upper surface projecting inwardly from a portion of said sidewall section to cover a substantial portion of the perimeter of said interior compartment; and

a baffle coupled with said sidewall section at a distance from said top, said baffle extending from said sidewall section inwardly into said interior compartment,

wherein said upper surface and said baffle are disposed in spaced relation from one another so that the flow of water between said upper surface and said baffle is limited and sloshing within the remainder of said compartment is minimized.

22. A livewell tank for use on a boat to hold fish, said tank comprising:

a bottom;

a sidewall section having first and second opposing ends, said sidewall section coupled with said bottom at said first end to define an interior compartment;

means for covering a substantial portion of the perimeter said compartment, said covering means coupled with said sidewall section; and

means for draining water from said compartment, said draining means coupled with said sidewall section proximate said covering means, whereby said compartment is capable of

retaining water near said top of said compartment regardless of the movement of the boat so that sloshing within said compartment is minimized.